IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.10.2007

CORAM

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.967 of 2007

Gandhimathi .. Petitioner

Vs.

1. State of Tamil Nadu
   rep. by its Secretary to Government
   Prohibition and Excise Department
   Fort St.George, Chennai-600 009.

2. District Collector and
   District Magistrate
   Perambalur District
   Perambalur. .. Respondents

Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus as stated therein.

For Petitioner : Mr.R.S.Kirubakaran

For Respondents: Mr.N.R.Elango
Addl. Public Prosecutor

O R D E R
(Made by P.D.DINAKARAN,J.)

The petitioner, mother of detenu Sundarrajan @ Vimalraj, son of Balasubramanian, who was incarcerated by order dated 28.3.2007 of the second respondent under the provisions of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) branding him as a Goonda, has preferred this writ petition for issue of a Writ of Habeas Corpus to call for the records in connection with the order of detention passed by the second respondent dated 28.3.2007 in Cr.M.P.No.13/2007 against her son, now confined at Central Prison, Tiruchirapalli, to set

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aside the same and to direct the respondents to produce the above said detenu before this Court and set him at liberty.

2. The ground case, which led to the order of detention, as complained by one Poongothai, had taken place on 21.1.2007 at about 12.30 pm. As per the complaint, the complainant and one Chellam were returning from forest after collecting firewoods. At that time, the detenu, under the guise of questioning about the road, snatched away the chain of Chellam and threatened the complainant and Chellam that he would do away both of them if they try to apprehend him, fled away in his motor cycle. When a passerby tried to apprehend him by chasing the detenu, the detenu threatened him and escaped by rashly driving his motor cycle. A case was registered in Crime No.11/07 for the offence punishable under Section 379, IPC.

3. Taking into consideration the above said ground case as well as four adverse cases, viz., Crime No.289/2003 on the file of Karur Aravakurichi Police Station for the offence under Sections 397 and 402, IPC, Crime No.120/2006 on the file of Perambalaur V.Kalathur Police Station for the offence under Section 379 read with 75, IPC, Crime No.12/2007 Perambalur Kaikalathur Police Station for the offence under Section 379, IPC and Crime No.7/2007 on the file of Perambalur V.Kalathur Police Station for the offence under Sections 380 read with 75, IPC and having satisfied that there is a compelling necessity to detain the detenu in order to prevent him from indulging in the activities which are prejudicial to the maintenance of public order and public health, the second respondent ordered his detention dubbing him as a Goonda.

4. The learned counsel for the petitioner assailed the order of detention on the ground of non-application of mind on the part of the detaining authority, as observed in the order of detention that the detenu is habitually committing the crimes, when the fact remains that the ground case has taken place nearly after three years of adverse case and there is no proximity between the first adverse case, which was registered for the offence under Sections 397 and 402, IPC and the ground case, which was registered for the offence under Section 379, IPC.

5. We have perused the entire materials placed before us and heard the submissions of both sides.

6. Concededly, the adverse case in Crime No.289/2003 on the file of Karur Aravakurichi Police Station for the offence punishable under Sections 397 and 402, IPC is said to have taken place in the year 2003. The ground case for the offence punishable under Section 379, IPC is with reference to the occurrence said to have taken place in the year 2007, i.e. nearly after three years from the year in which the adverse case has taken place. Therefore, the first adverse case would have no impact while passing the order of detention for want of proximity.

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7. In the circumstances, we are satisfied that the detaining authority had not applied his mind before passing the order of detention and therefore, the order of detention is vitiated. Accordingly, the order of detention is quashed. The detenu is directed to be set at liberty forthwith unless his presence is required in connection with any other case.

kpl

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Secretary to Government
   Prohibition and Excise Department
   Secretariat, Chennai-600 009.

2. District Collector and
   District Magistrate
   Perambalur District
   Perambalur.

3. The Superintendent
   Central Prison, Tiruchirapalli.

4. The Public Prosecutor
   High Court, Madras.

5. The Joint Secretary to Government,
   Public (Law & Order) Department,
   Fort Saint George, Chennai-9.

+1 cc to Mr.R.S.Kirubakaran, Advocate Sr.No.63609.

BS(CO)
dcp/16.11

HCP No.967 of 2007.

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